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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re J.W., a Person Coming Under the
Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

C.W. et al.,

Defendants and Appellants.

E071195

(Super.Ct.No. J270512)

OPINION

APPEAL from the Superior Court of San Bernardino County. Christopher B.
Marshall, Judge. Affirmed.

William D. Caldwell, under appointment by the Court of Appeal, for Defendant
and Appellant, C.W.

Johanna R. Shargel, under appointment by the Court of Appeal, for Defendant and
Appellant, J.W.

Michelle D. Blakemore, County Counsel, and Dawn M. Martin, Deputy County Counsel, for Plaintiff and Respondent.

C.W. (mother) and J.W., Sr. (father) appeal the orders terminating their parental rights and finding their 23-month-old son, J.W., likely to be adopted. They argue there is insufficient evidence J.W. was adoptable and the court abused its discretion by refusing to place him with a designated relative. We conclude the trial court's orders have adequate support and therefore affirm.

I

FACTS

A. Detention

About six months into mother's pregnancy with J.W., doctors found the child had abdominal tumors and predicted he wouldn't survive long after birth. The doctors offered to terminate the pregnancy, but mother and father refused. J.W. was born on January 12, 2017, had surgery to remove the tumors, and spent several weeks in the neonatal intensive care unit.

When J.W. was about three months old, father and mother took him to the hospital because he hadn't had a bowel movement in several days. An X-ray showed he had suffered four rib fractures, one of which hadn't yet completely healed. Father and mother said they didn't know about the fractures, but mother said in early March she had fallen with J.W. in her arms. She speculated the fall may have caused the injuries. Mother said

she had taken J.W. to the emergency room after the fall, but doctors didn't perform any X-rays and they released J.W. after only a few hours of observation.

Mother also disclosed Los Angeles County Child Protective Services had been involved with the family a month earlier because of a domestic violence incident between her and father. Mother was arrested as the aggressor and sentenced to probation for three years, as well as 52 weeks of child abuse parenting classes.

Father and mother had three prior referrals for emotional abuse, physical abuse, and general neglect regarding mother's older daughters, who had different biological fathers. An October 2016 referral said one daughter had come to school with a bruise and swelling around her eye after she'd been absent for three days. She reported she'd fallen. School officials reported she came to school tired, with dirty clothes, and a bad odor. An August 2016 referral said mother had beaten father, whose neck was bleeding from being scratched. The referral said the parents regularly have altercations in front of the children, but father wouldn't seek a restraining order.

On April 13, 2017, respondent San Bernardino County Children and Family Services (CFS) filed a dependency petition alleging mother and father endangered the child's safety based on J.W.'s injuries and their engaging in domestic violence in his presence. (Welf. & Inst. Code, § 300, subds. (a), (b), (e), unlabeled statutory citations refer to this code.) On April 17, 2017, CFS informed the court J.W. had been assessed by forensic pediatricians and found to have several severe nonaccidental injuries—10 rib fractures, two or three skull fractures, and a laceration to the spleen. The pediatricians

believed the injuries occurred during multiple incidents of physical abuse that were more recent than the falling incident mother reported. CFS also reported mother had four additional child abuse allegations in Arizona for physical abuse or neglect of a sister when she was three months old. The trial court found a prima facie case established J.W. came within section 300 and ordered him detained.

Later, on May 5, 2017, CFS amended the petition to allege J.W. suffered severe emotional damage because his parents engaged in domestic violence in his presence.

(§ 300, subd. (c).)

B. Jurisdiction and Disposition

In a May 8, 2017 jurisdiction/disposition report, CFS reported a forensic examiner believed rib injuries like J.W. had suffered usually result from a parent's hands squeezing an infant's chest violently, either with or without shaking the child. She said the skull fractures indicate child abuse even more than the rib fractures. The examiner expressed a high degree of confidence J.W. had been abused by someone in his household. The examiner also said J.W. was malnourished. The parents' visits were suspended the same day, pending completion of the Children's Assessment Center (CAC) report.

On June 15, 2017, CFS submitted the CAC report to the court. It said J.W.'s rib fractures were only two to three weeks old and inconsistent with mother's story they had happened on March 8, 2017 during an accidental fall. It noted J.W. would have been in extreme and obvious pain if he had suffered the injuries then, whereas the hospital staff said he was not in pain on his March 8, 2017 visit to the hospital. Mother and father were

refusing to talk with CFS or law enforcement. One older sister reported mother and father had slapped her hands and another sister's hands until they turned red. The other sister said father hit her with a big bat on the legs many different times, and father also hit mother until she bled.

On June 16, 2017, mother recommended a great-aunt for placement, and the court ordered her assessed. The court continued its order of no parental visits. At the August 18, 2017 contested jurisdictional hearing, the court found J.W. came within section 300, subdivisions (a), (b), (c) and (e), found the amended petition allegations true, and authorized unsupervised visits with the great-aunt.

At an August 24, 2017 contested disposition hearing, the juvenile dependency court denied reunification services to mother and father under the bypass provisions for children who are dependent because of conduct of a parent, have been adjudicated dependent due to their suffering severe physical harm, and have siblings for whom the parents are not receiving reunification services. (§ 361.5, subds. (b)(5), (b)(6) & (b)(7).)¹ The juvenile dependency court also set a section 366.26 hearing and ordered no visitation for the parents pending the hearing.

C. Section 366.26 Hearing

In its section 366.26 report, CFS recommended the section 366.26 hearing be continued for 120 days to allow J.W. to move in with the great-aunt when the approval

¹ The court placed J.W.'s sisters with their fathers, who were granted full custody, and terminated jurisdiction.

process was complete. The great-aunt said she wanted to adopt J.W. and had been having supervised weekly visits with him, but her husband had old criminal charges which needed to be cleared up prior to finalizing the adoption. On December 18, 2017, the court granted a continuance of the section 366.26 hearing to allow the approval process to finish.

Another nonrelated extended family member couple, Mr. and Mrs. G., were going through the approval process at the same time in case the great-aunt could not adopt J.W. They knew J.W. because they attended the same church as his foster family. CFS reported J.W. was loved and well-cared-for in his current foster parents' care, but they did not want to be considered as a permanent home for J.W. because they felt they were too old.

On March 26, 2018, CFS reported its concern the great-aunt would not protect J.W. from his parents. The social worker had obtained conversations from Facebook between great-aunt and mother suggesting they still had a continuous close relationship. Mother thanked the great-aunt for everything she was doing, and the great-aunt responded she loved mother. The great-aunt had also told the social worker she believed J.W.'s injuries were accidental. CFS said they believed placing J.W. with the great-aunt wouldn't be safe because she would let the parents have contact. CFS requested permission to move J.W. to the home of Mr. and Mrs. G., who were issued a family approval certificate. They noted for almost a year the G. family had spent time with J.W.

on Sundays at church, they wanted to adopt J.W., and Mrs. G. was a stay-at-home mother who could provide the atmosphere J.W. needed.

On June 21, 2018, CFS advised the court the Los Angeles Resource Family Approval (RFA) worker said they could not complete the approval of the great-aunt's home until he received a waiver regarding her husband's criminal history, and he was unable to estimate when that would happen. The great-aunt continued to visit J.W. every Sunday, and the foster mother supervised visits when the great-aunt's husband came to visits with her. J.W. didn't react to the visits with happiness or sadness. CFS noted J.W. had not been placed in a concurrent home and believed he shouldn't have to wait for a permanent home when Mr. and Mrs. G had already been approved.

Neither mother nor father were present at the June 28, 2018 section 366.26 hearing. The great-aunt said mother had asked her to take J.W. into her home, and she'd agreed. She said she would protect J.W. from them if they were a danger to him or the court ordered her to do so. She said his parents didn't know where she lived and, if they found out, she would get a restraining order to protect J.W. She said she already had custody of her brother's children, one of whom she had adopted, and made sure those children were never alone with their father during visits. She said she knew J.W. suffered "some egregious injuries," including "some rib fractures or broken ribs" and "some skull fractures." She said she was "assuming his parents are responsible" since he was in their care, but said she did not know who did it. She said she was unaware the court had found

mother severely physically abused J.W., and her brother had told her “they were more going after . . . the father.”

After the great-aunt’s testimony, the court noted she had recently gotten RFA approval from Los Angeles, but CFS had not yet received official notice. The parents’ counsel requested J.W. be placed with the great-aunt.

However, the court found placement with the great-aunt was not in J.W.’s best interest, because it required “providing a safe and secure and stable environment for [J.W.] and protecting [him] from his or her parents.” The court noted the great-aunt had minimized and been evasive about whether J.W.’s parents were responsible for the physical abuse. The court noted the absence of a close bond between the great-aunt and J.W. and said their visits were characterized only as being “friendly.” The court found the great-aunt wouldn’t protect J.W. from his parents because she didn’t believe they had physically abused him.

After the court denied relative placement with the great-aunt, mother’s counsel argued “[t]here could still be issues with adoptability due to the physical and mental capabilities” of J.W. and asked the court not to terminate parental rights. The court found it was likely J.W. would be adopted, and there was no legal impediment to adoption. The court noted, “the fact that there are some physical condition issues with respect to [J.W.] does not make him any less adoptable.” Mr. and Mrs. G. had specifically committed to adopting J.W. The court found J.W. was both generally and specifically adoptable and terminated parental rights.

II

DISCUSSION

A. *Adoptability*

Mother and father challenge the termination of their parental rights on the ground the trial court's finding that J.W. was generally and specifically adoptable was not supported by substantial evidence. We disagree.

At a section 366.26 hearing, the court must determine the most appropriate permanent plan for a dependent child who has been unable to reunify. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 50.) "Adoption is the preferred permanent plan." (*In re Jasmine T.* (1999) 73 Cal.App.4th 209, 212.) "The issue of adoptability requires the court to focus on the child, and whether the child's age, physical condition, and emotional state make it difficult to find a person willing to adopt." (*In re Brian P.* (2002) 99 Cal.App.4th 616, 624.) A child's young age, good physical health, and "ability to develop interpersonal relationships" are all attributes "indicating adoptability." (*In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1562 (*Gregory A.*)). "All that is required is clear and convincing evidence of the likelihood that adoption will be realized *within a reasonable time.*" (*In re Zeth S.* (2003) 31 Cal.4th 396, 406, italics added.) We review an adoptability finding for substantial evidence, giving the finding "the benefit of every reasonable inference and resolve any evidentiary conflicts in [its] favor." (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1232.)

“A child’s young age, good physical and emotional health, intellectual growth and ability to develop interpersonal relationships are all attributes indicating adoptability.

[Citation.] “‘Usually, the fact that a prospective adoptive parent has expressed interest in adopting the minor is evidence that the minor’s age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the minor. In other words, a prospective adoptive parent’s willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent *or by some other family.*’”” (*Gregory A.*, *supra*, 126 Cal.App.4th at p. 1562.) “If the child is considered generally adoptable, we do not examine the suitability of the prospective adoptive home.” (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1231.)

Here, the record contains substantial evidence J.W. was generally adoptable. He was only 17 months old at the time of the hearing. The social worker reported J.W. was crawling, smiled, and made good eye contact at just over 10 months. He had no sleeping problems at that time, and seemed happy with his foster family. Though he also exhibited speech and gross motor delays, he was with the same foster family from the time he was removed, and they didn’t report any trouble caring for him. Mother points out the foster parents decided not to adopt J.W., but their reason had nothing to do with J.W. They believed they were too old to provide a permanent home for a small child. All of this evidence supports the trial court’s general adoptability finding, and neither parent put on affirmative evidence to undercut that evidence at the hearing.

Moreover, the fact that both the great-aunt and the G. family wanted to adopt him lends additional strong support to the court's finding. (*Gregory A.*, *supra*, 126 Cal.App.4th at p. 1562 [one parent's "“interest in adopting the minor is evidence that the minor's age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the minor””].) We therefore conclude the trial court did not err by finding J.W. was likely to be adopted within a reasonable time and terminating parents' rights.

B. Refusal to Place Child with Relative

The trial court has broad discretion in making placement decisions, which we will overturn only on a showing the court abused its discretion. (*Alicia B. v. Superior Court* (2004) 116 Cal.App.4th 856, 863.) A court abuses its discretion only if, viewing all the evidence favorably to support the decision, we determine no judge could reasonably have made that decision.² (*Ibid.*)

If a child has been removed from the physical custody of their parents, the trial court must give preferential consideration to suitable relatives who request the child be placed with them. (§ 361.3, subds. (a) & (d); *In re Antonio G.* (2007) 159 Cal.App.4th 369, 377.) “Preferential consideration’ means that the relative seeking placement shall be the first placement to be considered and investigated.” (§ 361.3, subd. (c)(1).) Preferential consideration “does not create an evidentiary presumption in favor of a

² Respondent argues the parents don't have standing to challenge this order, but we need not address that issue to resolve the appeal.

relative, but merely places the relative at the head of the line when the court is determining which placement is in the child's best interests." (*In re Sarah S.* (1996) 43 Cal.App.4th 274, 286.)

To determine whether a relative placement is appropriate, the court may look to the following factors, among others: (i) the best interest of the child considering any special physical, psychological, educational, medical, or emotional needs, (ii) the wishes of the parent, the relative, and the child, if appropriate, (iii) the character of the adults in the relative's home, including whether they have a prior history of violent criminal acts or abuse, (iv) the nature and duration of the relationship between the relative and the child, (v) the ability of the relative to provide a safe, secure, and stable environment, (vi) the ability to protect the child from their parents, and (vii) the safety of the relative's home. (§ 361.3, subd. (a)(1)-(8).) The statute includes other factors and allows the court to consider factors not expressly listed. (§ 361.3, subd. (a).)

The trial court in this case focused on the correct factors and made a defensible determination that placement with the great-aunt was not appropriate. The court said it was focused on "providing a safe and secure and stable environment for [J.W.] and protecting [him] from his or her parents." The court specifically noted the great-aunt and another adult in her household did not appear to believe J.W.'s parents had abused him and, based on that evidence, found she was not likely to protect J.W. from his parents. Though the great-aunt said at the hearing she understood the parents had responsibility, the trial court concluded the great-aunt was not believable in saying she could protect

J.W. and provide him a safe and stable home. The court also noted the bond between J.W. and the great-aunt was not strong. She attended weekly visits with the child, but the social worker said J.W. didn't react to the visits with happiness or sadness and characterized the visits as just friendly. The trial court's conclusions were reasonable based on the evidence, and the court reached its decision that placement was not appropriate by considering the statutorily required factors. We cannot say the trial court abused its discretion in choosing not to place J.W. with the great-aunt.

III

DISPOSITION

We affirm the orders of the trial court terminating mother's and father's parental rights and declining to place J.W. with his relative.

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SLOUGH
J.

We concur:

MILLER
Acting P. J.

CODRINGTON
J.